88-765

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

Supreme Court, U.S.
FILED
OCT 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

THANH VONG HOAI,
Petitioner,

v.

THANH VAN VO, THACH DUY NGUYEN, MY-LINH D. SOLAND, NGUYEN THI BACH LUU, THANH VAN VO, SUNTECH SUNOCO, INC., and MICHAEL ARIF,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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APPENDIX II (Supplemental) PART C

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(Supplemental) APPENDIX II

PART C

Partial text of the Sworn Affidavit of the PLAINTIFF/PETITIONER THANH VONG HOAI of March 25, 1987.

Paragraphs 204) through 318) pp 141-211

(Remainder of Affidavit in previous or subseqent parts.)

then claim the flooding did the damage and collect from the insurance company for the damage under the protection against water damage. Later she did this again, about a week later, with this very same food, collecting over fifty thousand dollars ($50,000.) and subsequently trying still to sell some of the same old, spoiled food. Defendant MINH confirmed to me later the carrying out of this fraud.

(f) Defendant Thach Emerges From Behind the Scenes

204) On the following day, the 11th of March, 1986, when I and my wife went to the Mekong Center food store at 8:30 to "open" the new business which, as we had been led to believe, we thought we were purchasing from the defendants MINH and LUU.

205) When my wife and I entered the

food store it was about 8:30 AM. Defendants MINH and LUU were again by the cash register talking to the same stocky gentleman. This time the defendants introduced the muscular gentleman to me and my wife. This, they said, is our friend Mr. Thach, the owner and president of the McLean Bank. If, they said to me, you need any help, Mr. Thach will help you, he is our friend.

206) The defendants MINH and LUU also had with them at the time two other gentlemen, whom they said were architects who were doing the design for their very big project in Philadelphia. These two gentlemen were carrying with them two of the very large thin briefcase type cases that are used by architects for carrying around drawings.

207) Defendants MINH and LUU stayed

around for only about fifteen minutes that morning, which was a surprise to me and my wife, who had expected defendants MINH and LUU to stay around long enough to help them get started. But defendants MINH and LUU said they had very important business in Philadelphia on their project there and they had to go. Whereupon these defendants disappeared, not to be seen for a few days.

208) As defendants MINH and LUU left for what they represented to be their trip to Philadelphia with defendant THACH and the two architects they told me and my wife that while they were gone, Mr. Sat, the long time helper of defendant LUU whom defendant LUU had previously discussed with them, would show them the ropes and he would fill them in on who the suppliers were and Mr. Sat would guide them and help

them order the food and introduce them to the suppliers personally and so forth.

209) Within a matter of days, my wife and I went to see many of the suppliers, who were, as it turned out, ethnic Chinese wholesalers in Washington, D.C., who supplied many oriental groceries and stores and restaurants in the area. My wife is ethnically Vietnamese Chinese and speaks a Chinese dialect. Far from being good, the credit of the Mekong Center food store and of the defendants MINH and LUU was so bad and the reputation of these defendants so bad that some merchants did not want to deal with the Mekong Center even when my wife and I were prepared to pay cash.

210) Now all of this was known to the defendants MINH and LUU and they deliberately induced me and my wife to

rely upon their fraudulently represented "credit" which these defendants knew was non-existent, knowing full well that in trying to run the business while these defendants deliberately absented themselves as part of the scam or fraud leading up to the extortion that was to follow, myh wife and I would have to get new, fresh, wholesome, saleable food and that in doing so we would encounter no credit and hostility and would thus be forced by economic necessity into paying cash for food supplies for the store and eventually restoring the relations with wholesalers and suppliers while restocking the store and repairing its reputation for selling rotten food.

211) When the three defendants MINH, LUU and THACH, with the two architects, left to go to Philadelphia as they

claimed, on this occasion, they made a big production of it and let me and my wife know that they had no time for a business as insignificant as the food store. All this was "part of the act" and the fraud.

212) These defendants, however, did see that my wife and I were seised of the leasehold and the business by turning over very ceremoniously to plaintiff and his wife the keys to the Mekong Center building, two keys for the two locks on the back door of the building and one key for the lock on the front door of the building, a key for the alarm system, a key for the basement of the building, which was used as storage for the food store, and a key for the cash register, the latter being devoid of any money or thing of value. To show that they were truly turning over the business to me and

to my wife as promised the defendants MINH and LUU informed me and my wife that the keys to the front and back doors were the only ones and that even they, the defendants MINH and LUU, had no duplicates of these keys.

213) Right away that same day, March 11, 1986, was when I went with Mr. Sat to the Chinese-American wholesalers in Washington, D.C., to attempt to buy new food because there was not enough saleable fresh stock of food in the store to do any significant business. And right away I discovered the truth about the terrible credit of these defendants MINH and LUU and their store the Mekong Center food store. Deliberatelyh instructing me and my wife to attempt to obtain food and other goods from these wholesalers was a deliberate misrepresentation and fraud

designed to induce me and my wife to have to use their own resources to buy food, and it worked.

214) Within three weeks of March 11, 1986, I had to spend the entire thirty-five thousand dollars ($35,000) which my wife's mother had for our new business ventures on new supplies and groceries for the food store business.

215) During this same period, however, the volume of the business at the food store rose accordingly as the word spread about new ownership and new food stocks, from about one hundred dollars ($100.) per day gross volume to about seven or eight hundred dollars ($700. or $800.) per day gross volume. This was right on target for the projections of I and my wife had made to get to two thousand dollars ($2,000.) a day gross

volume in six months. We saw in the records of the store that its annual gross volume in the years around 1980 had exceeded one million dollars ($1,000,000.) per year and in at least one year had grown to almost two million dollars ($2,000,000.) per year.

216) During this period, from March 11, 1986, on through the next three weeks, I attended to the business of the store every day, with a few breaks, or until about April 4, 1986.

217) During this time the defendant VO and the defendant THACH came to the store frequently and they encouraged me to continue buying more new food for the Mekong Center food store with the money available to me, which they well knew was the money that I had available from my mother-in-law, of thirty-five thousand

dollars ($35,000.), that had to be used in the gas station and that my wife and I were counting on the defendants MINH and LUU to co-sign a loan with the bank of which defendant THACH fraudulently claimed to be owner and president, to get the money back in time for the gas station distributorship to make use of it.

218) The defendant VO would come to the food store every second or third day or so and praise me and my wife for getting so much new food and saying that he, VO, would shop there and bring many others to do so. This encouragement was intended to and did have the effect of stripping me and my wife of our available capital so that defendants might extort both businesses from us, the one with all the capital tied up in it, and the other for lack of that capital thus tied up.

219) The encouragement of the defendant THACH was much stronger than that of defendant VO. Defendant THACH was around the food store or one of the neighboring stores quite often. He would praise me and my wife for being smart to buy so much food and kept stressing to us that we had to have enough on hand to satisfy the customers. Defendant THACH went so far as to tell me and my wife, with regard to food that only had a shelf life of a week or so, and consequentlyh we were were only ordering small quantities: go ahead and order more, if they don't buy it I will buy it from you and give it to the poor and to my relatives, I want to see your business prosper.

220) While the defendant THACH, and, to a lesser degree, the defendant VO, were making sure that my wife and I tied up our

capital in new food inventory for the Mekong Center food store which we thought we were purchasing on a special basis, defendants MINH and LUU were busy avoiding anything which, as they saw it, might make them vulnerable to being caught for the fraud and the planned extortion that was to follow.

221) On March 13 or thereabouts the defendants MINH and LUU again appeared at the Mekong Center food store in the afternoon, along with the defendant THACH, saying that they were back from Philadelphia and their big project there, saying that they were very happy there and very pleased with what they were doing for the Vietnamese community there and that they had a big project there, two whole buildings, The Mekong Asian International Center, with stores, restaurants,

condominiums, professional offices, etc.

222) When I asked defendants MINH and LUU about signing the lease which I had drawn up for them for the food store they put me off by claiming to be too exhausted and tired out by their big negotiations and business dealings in Philadelphia to get involved with it. When Ithen asked the defendants MINH and LUU about their not having any credit with the store's suppliers as I had discovered, contrary to their representations, they told me not to worry about because in a week they said that they would have enough money from the five million dollars they were going to borrow from their friend defendant THACH the president and owner of the bank and they would clear it up right away.

223) After plaintiff pressed these questions the defendants MINH and LUU

left, staying in all about 10 or 15 minutes on this occasion, and saying that they would be very busy and tied up in Philadelphia for some time.

224) Neither I nor my wife saw defendants MINH and LUU for another 4 or 5 days after this visit that was on the 13th of March, 1986, or thereabouts, until the 17th or 18th of March. On that occasion the defendants MINH and LUU came into the store around noontime. Again defendant THACH was with the defendants MINH and LUU.

225) On this occasion the defendants MINH and LUU opened up the conversation by telling me and my wife about how very nervous they were about the settlement of the two properties in Philadelphia and how concerned they were about whether they would have enough money to close the deal.

226) When I asked about the signing of the lease for the food store and the loan application the three defendants MINH, LUU and THACH put him off telling me not to worry, Mr. THACH would have the loan application the next day. As to the lease, defendant MINH answered my question as follows: Don't worry about this small Mekong Center food store, this is small business, let your wife handle it. I got a big business in Philadelphia, worth millions, said defendant MINH, and you are going to be my right hand.

227) When I then turned to defendant THACH that gentleman said, referring to defendants MINH and LUU, "Listen to your uncle and auntie, that is right, they got a very big deal." (All of these conversations were in Vietnamese.)

228) Between these two visits from

defendants MINH and LUU, the one on or about the 11th of March and the visit on or about the 17th or 18th of March, the defendant THACH came to the Mekong Center several times for one reason or another and so did the defendant VO. Once when defendant VO came to me, I asked him if he knew defendant THACH, to which the defendant VO replied that he knew him well in Viet Nam, that his father was a very rich man there and everybody knew THACH. I also asked THACH on this occasion if he knew that THACH was the owner and president of a bank here in Virginia, to which defendant VO responded that, of course, because THACH's father was so wealthy in Viet Nam, he could get a lot of money out to put in banking here.

229) During the visit on the 17th or 18th of March, 1986, I then asked these

three defendants, MINH, LUU and THACH, about the loan forms that I was supposed to fill out from the bank which defendant THACH ostensibly owned and was president of so that I might then go ahead and obtain the fifty thousand dollar ($50,000.) loan which defendants MINH and LUU had promised to co-sign for. I was told that the defendant THACH would see about the forms the following day.

230) A day later, on the 18th or 19th of March, 1986, I was approached at the Mekong Center food store by the defendant THACH. On this occasion defendant THACH invited me over to defendant THACH's house that same evening to dine and discuss matters.

231) I accepted this invitation from the defendant THACH and went to defendant THACH's home in Springfield, Virginia at

the above address that evening about 9PM without my wife to have dinner with defendant THACH and discuss matters, which I readily enough assumed included filling out the forms for the loan application.

232) When the I arrived at the home of the defendant THACH that evening I found that the defendant THACH was there with an architect who was busy drawing and working on site plans and other drawings laid out over a table in the living room. Defendant THACH explained to me that he was busy with the planning for the financing of the Philadelphia project of the defendants MINH and LUU. Defendant THACH confided in me on this occasion that not only was he the owner and president of a bank but he was also the owner of a "big" construction firm. In this construction firm, he told me, "we only

work on projects that are over a million dollars. ($1,000,000.) We don't bother with anything that is less than a million dollars. ($1,000,000.)" (Translating from the Vietnamese language in which the discussion was conducted.)

233) This again was another of the elaborate frauds and deceits being perpetrated upon me, as I now see. Defendant THACH had no construction firm that he owned and was not an officer of a construction firm of any such size, just as he was not the president and owner of a bank. This was another piece of the fraudulent scheme to induce me to rely upon the financial wherewithal and connections of the defendants which were in reality, as defendants well knew, fictional, so that I would sink the available capital which I and my wife had

into food inventory for the Mekong Center food store. It was also part of the fraud to convince me falsely that the defendants THACH, MINH and LUU were so busy with big, important multi-million dollar projects and businesses that I should not be bothering them about finalizing the sale of the Mekong Center food business which they had held out to me to induce him to start using up my capital in the acquisition of food inventory which, as later events were to show, the defendants intended to extort from me. In fact, I did rely upon these misrepresentations to my detriment.

234) On this occasion, when I asked the defendant THACH about the loan application forms for the fifty thousand dollar ($50,000.) loan, I was put off by the statement that the loan forms were

kept at the bank and not the defendant THACH's home and that the defendant THACH would start the processing of the loan forms for the promised fifty thousand dollar ($50,000.) loan the next day at the bank.

235) The defendant THACH then went on to tell me that it was important for me to clear up any other debt that I had while they were at the business of making this loan and that defendant THACH would see that any other debt which I had would be cleared up by the promised loan in one transaction. So the defendant THACH, using this as a pretext, then asked me to reveal all of the debt which I had.

236) This in truth was a further fraud, as defendant THACH neither owned nor was president of any bank and could make or control no loans for anyone, much

less add to them, but I relied upon this deliberate deception designed to deceive me to my subsequent detriment.

237) When the defendant THACH asked for this information, I had replied in truth that I had no other debt except that on my credit cards which at that time totalled around eleven thousand dollars ($11,000.) more or less on which I paid down monthly.

238) The defendant THACH then fraudulently represented to me that, as president and owner of the bank, he would take care of all my credit card debt and that it would be included in the forthcoming loan and that I need not worry about it any longer, defendant THACH would take care of it at the bank the very next day. To this end the defendant THACH had me that night at defendant THACH's home,

write down all my credit cards by name and number and the amount owing on each.

239) This was a fraud and a deceit designed to induce me to rely upon a misrepresentation in order that I would be less insistent that the promised papers for the promised loan be provided so that I would fill them out and get the co-signatures of the defendants MINH and LUU and get the loan. In fact, I did rely upon the deliberate misrepresentation to my detriment.

240) In addition this particular fraud and deceit was intended to make me unaware of the use to which defendants intended to put such information, namely to extort my businesses from me reveal all of my debt and to whom it was owed so that the defendants might make use of that information in coercing me and extorting

from me, which they did.

241) The defendant THACH had no intention when he made this promise of doing anything that in anyway would take over or consolidate my credit card debt and in passing weeks he, in fact subsequently did nothing, as I discovered the next month when I received my credit card billings. All the effect of this fraud, as intended by defendant THACH, was to cost me additional interest on my credit card debt and put more pressure on me for not having made my usual monthly paydown of that debt.

242) On this occasion also, of dinner at the home of defendant THACH, defendant THACH asked me how the gas station dealership application with defendant Sunoco was going. On the occasions earlier at the food store when defendants

MINH and LUU had been there with defendant THACH, defendants MINH and LUU had told defendant THACH about Sunoco "giving Mr. Hoai a very good location," and the defendant THACH, speaking in his fraudulent role as president and owner of a bank, had said that he liked to help gas stations.

243) I responded to this query by saying that it was going very well with the application to defendant Sunoco for the gas station dealership and that the defendant VO had committed to giving me as a loan whatever money I needed over and above my own capital to get the station up and running and that I was expecting further word from Sun Oil Company any day now. This again was an inquiry designed to further the conspiracy to extort by ascertaining that I had, in fact, become

dependent upon the defendant VO for the furnishing of capital in connection with the gas station dealership while the defendants MINH, LUU and THACH saw that capital that was available to the plaintiff was drained off into inventory for the food store, which they intended to extort from me along with the gas station, as I now know..

244) The defendant THACH said that was good because everyone knew that the defendant VO was very big in the hot dog vendor business, having ten carts or more with which he made a lot of money and that defendant VO was also in the construction business like the defendant THACH, where VO also was very strong. VO could lend the money, he said. This was a fraud and deceit designed to assure my reliance upon the defendant VO.

245) On this occasion at the house of defendant THACH I had stressed to defendant THACH the importance of getting the promised loan for fifty thousand dollars ($50,000.) soon and, as a necessary condition thereof, getting the lease for the Mekong Center food store signed, because as I explained, my wife and her family, pleased with the quick success in raising the sales volume of the Mekong Center food store, were ready to provide access to another line of credit for the purchase of additional food inventory in the amount of one hundred thousand dollars ($100,000.) through relations and friends in the Chinese business communities in San Francisco and New York as soon as the lease could be signed and the business arrangements for the purchase of the business finalized.

246) Defendant THACH replied to this by topping it, saying that he had a friend in California who was in the oriental food importing business and that he could pick up the telephone and call this man in California and that this man would give me a line of credit in the amount of five hundred thousand dollars ($500,000.). Defendant THACH offered to take me to California to meet this friend and set up such an arrangement.

247) This was a fraud and deceit designed to use a big lie to deflect me and my wife from dealing with the community of Chinese merchants and businessmen who might supply us such credit which would have been an obstacle to the extortion plans of the defendants. In fact, I did rely upon this fraudulent misrepresentation to my own harm and that

of my wife and mother-in-law.

248) Nonetheless, since I did not know at the time that this was a fraud I said that that would be good and asked the defendant THACH to go ahead and make such a call, to which the defendant THACH replied that he would but let him talk to the gentleman first and set it up before they would do any thing on it, which was a way of forestalling having to act on such a sham and fraud.

249) This particular fraud and deceit was also designed to induce me to keep on putting the capital available to me into more and more inventory all the better for the defendants to then extort from me both the food business and the gas station and during the evening as well the defendant THACH kept praising my efforts for getting so much good, new food and said that it

was amazing how the business of the food store was increasing and that I was doing the smart thing and the right thing by getting so much good inventory and that my wife and I were going to sell it all and make a lot of money.

250) After I left that dinner meeting that evening of the 19th of March or so, I saw defendant THACH almost every day at the Mekong Center for about a week thereafter, but the defendant THACH merely waved and said hello or made sociable talk on these occasions and never mentioned the loan or the lease or any other business dealings that he and I had discussed that evening. I assumed that this was because the loan arrangements, including the paying off of my credit card debt, were in process at the bank and I therefore felt it wise to wait about a week for such

processing before inquiring again, which was the desired effect on the part of defendants for this part of their scheme of fraud and extortion.

251) It was on the next day after this dinner meeting at the house of defendant THACH, on or about the 20th of March, 1986, that I was notified by Ernie Peele, the area manager of the defendant Sunoco, that Ernie Peele wanted to meet the next day with me to accept the deposits for the gas station dealership in the amount of five thousand dollars ($5,000.) for security deposit and another two thousand dollars ($2,000.) for rent deposit for the gas station and that I would need to bring with me friend whom he had told Ernie Peele about, the defendant VO, who was going to loan me the additional money I needed in the amount of

thirty-five thousand dollars ($35,000.) for the start-up capital.

252) Upon being called by Sun Oil Company's area manager on this day and being so notified, I immediately called defendant VO and paged him through his "beeper." Defendant VO responded and came to the Mekong center about the luncheon hour, where he encountered defendant THACH who also happened to come about that time and they meet in the sight of me and my wife and greeted each other familiarly as if they had known each other for some time whereupon they went upstairs to the restaurant in the Mekong Center and ate together.

253) Before the defendants VO and THACH went off to eat together on that day I had arranged with defendant VO that Defendant VO would come to my house that

evening.

(g) The Wire Fraud of Defendant Vo and Others

254) Throughout the period leading up to the meeting of March 21, 1986, between me, Sun Oil Company's area manager, Ernie Peele, and the defendant VO, the meeting described in the statements of paragraph 69 through 78 above, after soliciting the loan of additional capital in the amount of thirty-five thousand dollars ($35,000.) as set out above, I would check with the defendant VO and get from him assurances that indeed defendant VO had the capital and had it readily available for the time when the initial deposits and expenditures would be required.

255) On each occasion when I would check with the defendant VO, the defendant VO reassured me that he had the money

available up to one hundred thousand dollars ($100,000.) any time I needed it for the gas station, that his big construction business generated this kind of money.

256) This was a lie and deceit and a fraud, a deliberate misrepresentation designed to induce me to rely upon it so that I would not seek capital elsewhere through other loan arrangements and would rely upon defendant VO to produce and lend this capital to me. Unfortunately, I so relied upon these inducements and was harmed thereby.

257) Each time that I had talked to Ernie Peele on the telephone during this period from February 14 up until March 21, I would call the defendant VO on the telephone soon thereafter, often reaching the defendant through his "beeper" or

wireless remote telephone paging device. Then I would talk to him on the phone to tell him the latest word from Sun Oil company and get defendant VO's assurance that he was still in the deal with his money ready.

258) On that evening of March 20, 1986, the evening before the meeting with Ernie Peele, the defendant VO came to my home in Arlington at about dinner time. At that time I asked the defendant VO if he could have the seven thousand dollars ($7,000.) for the deposits the next day, because, as I told him,if the defendant VO could not provide the money as he had said all along he could, then I would have to get it somewhere else, but I needed to know before the meeting with Ernie Peele scheduled for the next day.

259) The defendant VO said no, that

I did not have to do that, that he, the defendant VO, had the money and he would have the seven thousand dollars ($7,000.) the next day as he had agreed.

260) That evening also, the defendant VO spoke to me of the one thousand and five hundred dollars ($1,500.) which he had made as a personal loan to me late in February as set out above, and he said that such money was nothing to him because he made so much money in his construction business and other businesses that such money was nothing to him, it was something to buy toys for the children and he gave it to plaintiff as a gift for toys for my children. I replied to the defendant VO that no, the one thousand and five hundred dollar ($1,500.) loan was a personal loan and I intended to pay it back. This

representation by the defendant VO was a misrepresentation designed to deceive me into thinking that I did not have to worry about paying back the personal loan of fifteen hundred dollars anytime soon when in fact the defendants were planning, as part of their scheme to defraud and extort, to accuse me of having borrowed the money for business purposes and not having paid it back.

261) The meeting with Ernie Peele, the area manager of defendant Sunoco, was set for 10AM the next day.

262) The next morning, when 10AM came, I was still waiting at my home for the defendant VO and defendant VO had not shown up.

263) I had called defendant VO on the latter's "beeper" service five, six or seven times, stressing into the "beeper"

recording service that it was a very big emergency.

264) Finally, about 10:15AM, the defendant VO called me at my house saying that he had gotten the message but that he was very busy with his big construction company and that he would be right over. This was a fraud since defendant VO had no large construction company that would keep him doing anything. It was the first of many acts of deceit whose purpose was to try and make the me look bad to the Sunoco personnel in order to gain the cooperation of the Sun Oil Company ultimately in the extortion scheme and it worked.

265) About ten minutes later the defendant VO arrived, driving in a hurry and insisted that I jump into defendant VO's car and not take the time to get my own car out of the driveway, then

defendant VO drove off with me in a big hurry. I explained to defendant VO that I was upset because I had never been late for an appointment with anyone from Sun Oil Company before.

Defendant VO told me not to worry, that Ernie Peele would wait for him. The meeting described above then took place at the Howard Johnson Motor Hotel coffee shop on route 1, starting about 10:45AM.

266) At this meeting at the Howard Johnson, when it came time to put down the deposit money of the five thousand dollars ($5,000.) for the security deposit and the two thousand dollars ($2,000.) for the rent deposit, I began to say that I would go to my bank and buy the cashier's checks for the two amounts and come right back but before I could do that (I said this in English in the hearing of Ernie Peele) the

defendant VO said no, that he would go to his bank and purchase the cashier's checks. He said to me and Mr. Peele: Mr. Ernie Peele is your boss, you sit and drink coffee with him, I'll go to my bank and get the cashier's checks.

267) Defendant VO then left. It was around 11AM or a little after. I just sat with Ernie Peele, the area manager of the Sun Oil Company and waited and waited. Finally, around about fifteen or twenty minutes after 2 in the afternoon, defendant VO returned with the cashier's checks, saying that he had gotten a ticket from the police and that is why he had taken so long. Defendant VO gave the cashier's checks, from the United Virginia Bank, to me and then I in turn handed them to Ernie Peele, who then gave a receipt to me acknowledging that I had made my

deposits for the dealership.

268) When finally I and defendant VO left the meeting, defendant VO, it turned out, had locked the keys in his car and it took me about half an hour to get the car door open with a coat hanger.

269) I have it on information and belief that defendant VO had no money such as he produced that day that was his money, but that he obtained the money from one of the other defendants or through the efforts or connections of one of the other defendants and that the story of the traffic ticket was a deceit designed to cover up that defendant VO had to take the time to get the money because it was not readily accessible in any account which was really his and that he had to meet with one or more of the other defendants and get directions on what to do.

270) After this meeting with Ernie Peele on March 21, 1986 was over, I and defendant VO returned to the Mekong Center food store which was busy and full of customers. Between the good business in the store and the securing of the dealership with defendant Sunoco, I was very happy and, as a result of my happiness and the need to get everything ready at the gas station on Pennsylvania Avenue, S.E., in Washington, D.C., I slacked off for several days in my efforts to get the lease for the Mekong Center food store signed.

271) That day, the 21st of March, when I and defendant VO returned from the meeting with Ernie Peele, the defendant VO and the defendant THACH encountered each other in the Mekong Center food store. They greeted each other by name and

obviously recognized each other and knew each other. They later went to the restaurant on the second floor of the Mekong Center building and spent some time together.

272) It is important for full understanding to refer to all preceding paragraphs 1) through 271) above for what follows:

273) From March 22, 1986, until March 28 or thereabouts I worked in the gas station at 2305 Pennsylvania Avenue, S.E., Washington, D.C., cleaning up the premises, receiving the Sunoco maintenance people and working with them to replace broken windows, lights, make the bathroom clean and sanitary and usable, including getting the plumbing working again, replacing broken pieces of material and equipment, pulling out the weeds and grass

that had grown up in the cracks, filling the cracks, cleaning up and getting rid of old tires and other debris, including junked engines and other heavy parts, repairing the roof, etc. During this time I worked long days and had no time to pursue the defendants MINH and LUU for the promised lease for the Mekong Center food store or defendant THACH for the promised application papers for promised bank loan.

274) On or about the 28th of March, or about six days after beginning this clean up and restoration of the gas station facility, I became concerned about the failure of the defendants MINH and LUU to provide the promised lease for the Mekong Center food store or, along with defendant THACH, the promised loan application papers.

275) On or about the 28th of March, 1986, I called the defendants MINH and LUU at their home in Virginia from the public phone at the gas station (at that time the private phone for the gas station had not yet been installed). The defendants MINH and LUU were not at home but their daughter was and she answered the phone. I left word that I would meet the defendants MINH and LUU that same day at the Mekong Center food store around 6 or 7 o'clock. I intended to press the defendants MINH and LUU about signing a lease.

276) I went to the Mekong Center food store late in the afternoon of that day and around 6:30 PM or so the defendants MINH and LUU showed up at the Mekong Center food store. I told the defendants MINH and LUU that I had a problem in that

I now had to spend all of my time with the gas station business which would only be more demanding on my time as the actual opening of it approached. I stated that with the opening of the gas station business fast approaching I soon would have no time, when the lease was signed, to go around to the various Arlington County offices and other places to see about the business license and other matters that had been held up pending the signing of the lease so that I could show that I had a leasehold in which I could establish the business as belonging to me and my wife. I told the defendants MINH and LUU that I must therefore have the lease as soon as possible.

277) To make my point I showed the defendants MINH and LUU the receipt from Ernie Peele, the area manager of defendant

Sunoco, for the two deposits totalling seven thousand dollars ($7,000.) which he had received on the 21st. The defendants MINH and LUU now knew that I was obligated to go ahead with the gas station but that my capital from my mother-in-law was tied up in the inventory of the food market.

278) Defendants MINH and LUU on this occasion told me that they understood my problem and they begged him "just a few more days" and they would get the lease for me. They were especially nice to my wife and told her not to worry, that they would sign the lease as they had promised and that I and my wife had invested so much in the store and taken it over and that they, the defendants MINH and LUU never intended to take the food store back and that they, the defendants LUU were always good to their word but that they

were so busy with their big real estate project in Philadelphia. My wife responded by saying that she believed them and she would wait for them to do as they promised.

279) The promises of the defendants MINH and LUU to do the promised lease and sign it within a few days were a further fraud and deceit. They had no intention then or ever of actually drawing up and signing such a lease, or even of signing one that someone else had drawn up. Their intention was to compel me and my wife to tie up more and more of the capital made available to them by my mother-in-law in the food store inventory so that the capital would not be available to the plaintiff in order that the other defendants, in conspiracy with these two defendants, might extort the gas station

from plaintiff and to simultaneously force me and my wife to convert as much of our available capital into food inventory for the store as possible without their being any protection of written documentation protecting the constructive and de facto ownership which they had led me into in order that they might have a more valuable prize when they extorted my interest in the food store business from him.

280) On the occasion of this meeting at the Mekong Center food store on or about the 28th of March I also asked the defendants MINH and LUU about the loan application which their friend, defendant THACH, the banker, had promised and which they had promised to co-sign. The defendants MINH and LUU stated in reply to this inquiry that defendant THACH was taking care of the matter of the loan

application and that they had already talked to him and that defendant THACH had said he would do it.

281) This again was a fraud in that these defendants knew full well that defendant THACH was not taking care of any such loan application and that defendant THACH would not do the loan and the defendants MINH and LUU deliberately misrepresented that he would in order to induce me to rely upon their promises so that he would continue with my wife to build up and revive the Mekong Center food store so that they might extort from me the value which I and my wife were building in the business by extorting from me the business interest thus built up and so that the capital from my mother-in-law which I had placed in the food store inventory would not be available to me for

my use in the gas station business.

282) After this meeting I went back to work preparing the gas station for its opening, surveying the neighborhood businesses around the gas station, announcing its opening and preparing to do business in the neighborhood. This went on for a few days.

283) On March 31, I entered into the lease and franchise agreement with the defendant Sunoco, which was signed by me and by Sunoco area manager Ernie Peele on behalf of Sunoco and Ernie Peele then said that he was taking the lease to Philadelphia for final approval at the headquarters of the defendant Sunoco.

284) Just after signing the lease on the 31st of March, 1986, I called the defendant VO and told him that I had signed the lease and that I had the lease

with Sunoco. The defendant VO at this time asked me over the telephone if he, the defendant VO could see the lease, to which I replied that he was going to the Mekong Center food store later to show the lease and franchise agreement to his wife. The defendant VO then asked if he could meet me there at the Mekong Center food store and see the lease at that time also.

285) Plaintiff did not know it at this time but the defendant VO intended to take, by an act of deceit, the original of the lease which belonged to me from me as a step in the planned extortion.

286) About 4:30 PM or so on that day I arrived at the Mekong Center food store and showed the lease and franchise agreement with defendant Sunoco, all signed, to his wife. About an hour or so

later the defendant VO showed up at the Mekong Center food store also and asked if he could see the lease and franchise agreement with Sunoco. I showed it to him.

287) Defendant VO told me that he was in a hurry to get back to the very big construction job he was working on but wanted to know if he, defendant VO, could have a copy of the lease and franchise agreement between me and defendant Sunoco. I said of course. This was a fraud; there was no very big construction job as this defendant knew, he only wanted me to rely upon this false representation in order that he might induce me to rely upon his false need to hurry in order that this defendant might take the original of the lease and franchise agreement.

288) The defendant VO asked if he

could take the lease and franchise agreement right then across the street to a photocopy service located there and make a copy before he returned to this very big construction job. I agreed that he could.

289) Defendant VO went across the street to the photocopy service and a little while later defendant VO returned and, saying "here's your lease," he gave me what he intended me to believe was the original of the lease and franchise agreement in a large envelope. This was a fraud and a deceit.

290) Later, after I had gone home, when I looked in this envelope I discovered that defendant VO had switched the photocopy of the signed counterpart of the lease and franchise agreement between me and Sunoco with the signed original and

had kept the original while giving me the photocopy in the envelope.

291) When I discovered this I called defendant VO right away on the "beeper." The defendant VO did not respond until the next day, when he called me on the phone. I asked the defendant VO why he had taken the signed original counterpart of the lease and franchise agreement instead of the photocopy as he had represented he was doing. The defendant VO responded by saying that he had taken the signed original by mistake and that he thought he had taken the photocopy.

292) Nonetheless, thereafter, the defendant VO never would return the original of the lease and franchise agreement between me and the defendant Sunoco to its rightful owner, me, though I pressed him to do so on many occasions.

Defendant VO, when pressed to return it, always made up some excuse. At first he said it was at the construction site of his very big construction job and he hadn't had time to get it. Then he said it was lost among others of the many papers at the very big construction site and it would take time to find it. Finally the defendant VO said that he had just lost the document altogether. When the threats of death and bodily harm began, I ceased to press the request.

293) This was the beginning of a series of events in which, in a somewhat simpleminded fashion, the defendant VO sought, by trick and subterfuge, and ultimately by threats of bodily harm and economic harm, to separate me from the emblems of ownership of what defendants perceived to be my gas station business

and the same all constituted badges of fraud.

294) A few days later, on or about the 4th or 5th of April, 1986, I considered that the few days which the defendants MINH and LUU had asked him to give them to get the lease for the Mekong Center food store prepared had run and so he began to press them again to sign the lease, telephoning them frequently at their home, or at the home of the defendant THACH, with whom the defendants MINH and LUU increasingly spent their time, or meeting them, often with the defendant THACH and/or the defendant VO at the Mekong Center food store.

295) Always the defendants MINH and LUU had some excuse as to why they had not prepared the lease. Sometime it was that they didn't feel well. Sometimes it was

that they had had a fight between themselves. Sometimes it was that their teenage children had left them and were going bad. Always there was the business about: Mr. Hoai, why do you concern yourself with small things, we are doing big business in Philadelphia, this is small stuff, let your wife run the petty business of the food store; don't concern yourself with such petty matters; you will be MINH's right hand in the big Philadelphia business, etc. This went on until April 25, 1986, or thereabouts.

296) From the time that the defendants MINH and LUU came to my house and began to talk to me and wife about purchasing the Mekong Center food store as set out in paragraphs 148 through 152 above, from that time on, I and the defendants MINH and LUU began to talk to

each other with increasing frequency on the telephone, calling each other often to discuss the business of my in getting the Sunoco dealership and franchise and then the food market, or the business of the defendants MINH and LUU in developing their Philadelphia project. I talked to the defendants MINH and LUU at least 3 or 4 times a week. Frequently, during this period, the defendants MINH and LUU would call me at home or at work and frequently, I would call defendants MINH and LUU at their home, which they also used for the conducting of their business, as they had no separate office.

297) Beginning in the first days of April, almost every evening that I called the house of defendants MINH and LUU, the defendant THACH would be at the house of MINH and LUU also.

298) After the evening on or about March 18, 1986, that I ate dinner at the house of defendant THACH as set out above, I also frequently called or was called by the defendant THACH. The defendant THACH asked me not to call him, THACH, at the McLean Bank which he was ostensibly president and owner of, because he said it would not look right for him, THACH, as the owner and president of a bank, to be seen talking to the Vietnamese people because people would wonder why he was helping other Vietnamese instead of Americans.

299) Beginning in early April also, particularly early in the evening, I would call the house of defendant THACH and THACH would be there with the defendants MINH and LUU.

300) Beginning just a few days into

April, when I would call the house of defendants MINH and LUU or THACH, the defendant VO would be there as well.

301) From early April on the defendants MINH, LUU, THACH and VO began to go places together with increasing frequency.

302) After the business with the original signed copy of the lease described above, in which the defendant VO stole that document from me by deceit the next thing that the defendant VO did was, by trick, and using the leverage of the money he was ostensibly putting up while my capital was tied up in the food inventory at the Mekong Center food store, to gain control of the checking account of my new Sunoco dealership and he did that in this way:

303) On about March 4 or 5, Ernie

Peele, the area manager for the defendant Sunoco, called my wife at the Mekong center and asked her to have me call him at home. On this occasion, as on many of the occasioms described herein, Ernie Peele called from Maryland to Virginia.

304) That evening I called Ernie Peele at his home. During this telephone call Ernie Peele told the me that I would have to hawe a bank account for the dealership right away in order that when the first load of diesel and gasoline was delivered when the station was opened on the 10th of April, the route driver delivering fuel would know to accept a check from me on an account as described to me by bank name and number by Ernie Peele. The route driver would have to have that instruction before he would accept the check and deliver the fuel.

This had to be cleared with the credit department of the defendant Sunoco in Philadelphia, Pennsylvania before that day so that the driver could be so authorized.

305) When I was told this by the Sunoco area manager Ernie Peele I waited until the next morning about 6 or 7 AM and called the defendant VO on his "beeper." When the defendant VO called me back two or three hours later in the day, I asked the defendant VO to bring in the rest of the thirty-five thousand dollars ($35,000) that the defendant VO had committed to lend, or twenty-eight thousand dollars ($28,000.) more or less (After providing the seven thousand dollars ($7,000.) for the deposits on March 21 as set out above) and to put it in the branch of the American Security Bank located near the

gas station at 2305 Pennsylvania Avenue, S.E.

306) The defendant VO replied to this request by telling the me that the American Security Bank was very badly managed. I asked the defendant VO how he knew that about the American Security Bank. The defendant VO said: I know that in fact. I will not put the money in that bank. The defendant VO then said: I know a very good bank and I will open the account at that bank and I will tell you later.

307) On that same day the area manager for defendant Sunoco, Ernie Peele, called me and asked me if he had the bank account and the account number yet. I did not have it. They left it that Ernie Peele would come around the station on the 9th and get the bank name and account

number.

308) The next day, around the 7th or 8th of April, the defendant VO stopped in to see me at the gas station while the Sunoco maintenance man, Mr. Lee, was working on the gas station pumps getting them in working order to be ready to open up on the 10th of April. I asked the defendant VO if he had opened the bank account. The defendant VO gave me in response two standard card forms of the type that are used in banks to authorize the opening of checking accounts (signature cards).

309) I did not pay attention to see the name of the bank on the cards. But I asked the defendant VO at this time what the name of the bank was where defendant VO was opening the account for the gas station. The defendant VO replied to me

that the bank was the McLean Bank, that it was a very big bank and that it was a bank that really tried to help the businesses, that it would not return checks when accounts were temporarily short. All the banks cannot give you that favor he said. I replied that I had never heard of the McLean Bank. Defendant VO asked why I had never heard of the McLean Bank because everybody knew it was a very good bank.

310) Now all of this about the banks was a fraud and deceit by the defendant VO. He did not know that the McLean Bank was a big bank, which in fact it was not, particularly when measured against the American Security Bank. Nor did he know anything about any mismanagement of the American Security Bank. All of these were deliberate misrepresentations made so that I, as I did, would have to rely upon these

misrepresentations and allow the defendant VO to force the choice of a bank that was in a relationship with the defendants so as to enable them to defraud and extort my businesses from me. And I relied upon these misrepresentations to my detriment.

311) I signed the bank cards which the defendant VO had on that day with my signature and the defendant VO did not sign them in the presence of me nor give any indication that he intended to do so but rather acted and spoke as if he was obeying the instruction of me to open an account for me.

312) Defendant VO then said he would take the cards as signed by me and open the account at the bank and I did not have to bother to come along. To this I replied by asking how come I did not have to come along and witness his signature on

the signature cards, to which the defendant VO replied that I did not have to do that because he knew the people at the bank and it was a very friendly bank. Defendant VO left.

313) Later that same day, after the defendant VO had left the station with the signature cards as signed by me, I called the defendant VO on the "beeper" in the evening to make sure that he would bring back the promised check book for the new account the next morning because, unbeknownst to the defendant VO, I had an appointment the next day with the insurance man, Mr. Floyd May, with whom I had dealt for many years in which I was going to pay Mr. May the payment for the binder leading to insurance on my new gas station business. This next day, the 9th of April, was one day before the opening

of the station on the 10th of April and it was the same day on which Ernie Peele was to come by and get the bank name and account number.

314) That same day, in the evening, after I called defendant VO on the "beeper," the defendant VO called me back on the telephone and told me that the bank account had been opened. The defendant VO said he was very busy that evening with the big construction at the big construction site and he could not bring the checkbook by but he would be sure to bring it by the next morning.

315) The next morning came, however, and the defendant VO did not come to the gas station and I still had no check book. Eleven AM was the hour of the appointment with the insurance man, Mr. Floyd May, who arrived on time and at that time also

Ernie Peele came to the station. I introduced Floyd May and Ernie Peele to each other and Floyd May gave me a strong recommendation in front of Ernie Peele, saying that he had done business with me many years. Ernie Peele said that he was very pleased to see the plaintiff obtaining his insurance before the station opened.

316) Because the defendant VO failed to show up with the checkbook and account number as promised, I wrote a check on my personal account to Floyd Mays and his insurance firm for sixteen hundred dollars ($1,600.) to pay the insurance and secure the binder.

317) I had to make up excuses for Ernie Peele to explain why I didn't have the bank account number. I told Ernie Peele the name of the bank, the McLean

Bank, but said that I had not had time, because of working on the station, to get to the bank to get the account number of the account which my friend VO had opened for me.

318) To this Ernie Peele replied that he could see that I had worked very hard on the station and that he was pleased with its appearance, so he understood and he then gave forms to me which Ernie Peele filled out for me all except for the account number and I signed. These were standard forms of the defendant Sunoco which had to be filled out on each dealer before the credit department of Sunoco could authorize the drivers to leave a delivery and accept a check. Ernie Peele said to me that he would stop by the station anyway for the grand opening and at that time I could give him the account

number which I could get from the bank in the meantime.